

JOSHUA J. VOSS
JVOSS@KLEINBARD.COM
Direct Dial 267.443.4114



April 17, 2023

VIA CM/ECF

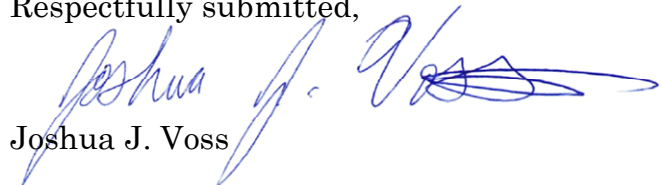
Hon. Michael M. Baylson
Eastern District of Pennsylvania

RE: *Greenwood Gaming & Entertainment, Inc. v. POM of Pennsylvania, LLC, et al.*, No. 2:22-cv-4434-MMB

Dear Judge Baylson:

On behalf of Defendants POM of Pennsylvania, Inc. and Pace-O-Matic, Inc., and in follow up to Your Honor's request during the hearing in the above matter on April 12, 2023, I write to bring the Court's attention to new state-law authority relevant to the pending motion to dismiss (doc. 18). Today, the Court of Common Pleas of York County, the Honorable Amber A. Kraft presiding, entered the Order attached hereto as Exhibit A regarding the POM Skill Games. In relevant part, the Order states as follows: "The Court finds, due to the absence of any evidence to the contrary, that the Pennsylvania Skill Game devices programmed by Pace-O-Matic, Inc. ... are not gambling devices *per se*, and shall be returned[.]"

Respectfully submitted,



Joshua J. Voss

cc: All parties (via CM/ECF)

Exhibit A

IN THE COURT OF COMMON PLEAS
YORK COUNTY, PENNSYLVANIA

COMMONWEALTH OF
PENNSYLVANIA

v.

\$14,611.00 U.S. Currency and Six (6)
"Pennsylvania Skill" Video Gambling
Devices,

Defendant

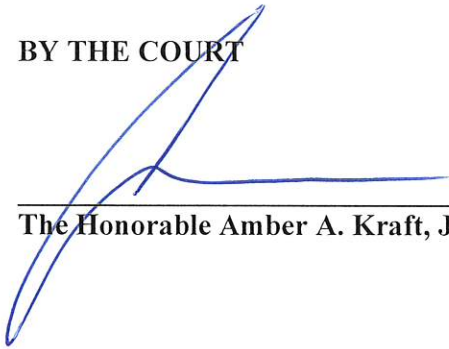
NO. CP-67-MD-2529-2022

ORDER

AND NOW, this 17th day of April, 2023, it is hereby ORDERED that the Commonwealth's Praecipe to Withdraw Petition for Forfeiture and Condemnation, filed on Friday, April 14, 2023, at 12:45 p.m., is **STRICKEN**. Pursuant to Pa.R.C.P. 229(a), a discontinuance is the exclusive method of the voluntary termination of the petition. Discontinuance of the petition would prejudice the rights of the claimants, who were present in Court and prepared to proceed with the hearing on April 17, 2023. Granting a discontinuance at this late stage would prejudice the rights of the claimants, who are entitled to a merits determination in order to protect them against further seizures and enforcement actions by the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

It is **FURTHER ORDERED**, in light of the Commonwealth's inability to proceed with the evidentiary hearing scheduled for April 17-18, 2023, that the Commonwealth's Petition for Forfeiture and Condemnation is hereby **DENIED** on the merits. The Court finds, due to the absence of any evidence to the contrary, that the Pennsylvania Skill Game devices programmed by Pace-O-Matic, Inc., which are owned by claimant Starlight Sales & Vending, Inc., and were seized from claimant Colletti, Inc. (d/b/a Brewer's Outlet) on October 2, 2020, are not gambling devices *per se*, and shall be returned to Colletti, Inc. within five (5) days of the date of this Order. This Order shall include the return of the \$14,611.00 in U.S. Currency that was seized along with the devices at issue.

BY THE COURT



The Honorable Amber A. Kraft, Judge

CLERK OF COURTS-YORK
PR 17:23 AM 11:24